

REMARKS

The issues outstanding in the Office Action mailed September 26, 2008, are the information disclosure statement, the objections to the specification and claims, and the rejections under 35 U.S.C. 112 and 103. Reconsideration of these issues, in view of the following discussion, is respectfully requested.

Objection to Specification

The specification has been objected to as failing to provide antecedent basis for claim 26, which recites an emulsifier-free emulsion. The specification has been amended in order to provide basis for this claim. Inasmuch as the claim is an original claim, it is submitted that the amendment to the specification does not represent new matter. Withdrawal of the rejection is therefore respectfully requested.

Objection to Claims

Claims 2-10, 13-16 and 18-27 have been objected to as a result of various typographical errors and the usage of British spelling. The claims have been amended in order to place them in a format more usual for U.S. practice. The scope of the claims has not been changed either literally, or for purposes of the doctrine of equivalents by these amendments. Withdrawal of the rejection to the claims is therefore respectfully requested.

Rejections under 35 U.S.C. 112

Claim 26 has been rejected under 35 U.S.C. 112, first paragraph as failing to comply with the written description requirement. As noted above, antecedent basis for the emulsifier-free emulsion has been providing in the specification. Accordingly, the claims find written description therein, and withdrawal of the rejection is respectfully requested.

Claims 5, 6, 25 and 26 have been rejected under 35 U.S.C. 112, second paragraph. Reconsideration of this rejection is also respectfully requested. Claim 5 has been amended in order to provide antecedent basis for the capsule walls. Claim 25 has been amended in order to

delete the objectional term “preferably.” Finally, with respect to claim 26, it is noted that the emulsifier-free emulsion is disclosed in the specification. Withdrawal of all the rejections under 35 U.S.C. 112, second paragraph, is therefore respectfully requested.

Objections under 35 U.S.C. 103

Claims 1-20, 22 and 24-27 have been rejected under 35 U.S.C. 103 over Hager (U.S. 2003/0143166). Reconsideration of this rejection is respectfully requested. As noted at page 5 of the Office Action, Hager teaches the use of spray-drying or freeze-drying to obtain a powder, a process in which UV filters can be the material sprayed dry. Although the rejection includes claims 4 and 12 in the statement of rejection, the Office Action a pages 5 and 6 does not discuss why it would be obvious to encapsulate the materials which are spray or freeze-dried, so as to produce encapsulated materials. The Office Action cites paragraph 15 and the abstract of the reference for teaching of encapsulation. However, a careful reading of the published application does not support such allegation of encapsulation. Regardless, it is noted in the present specification that encapsulated materials are known. However, the spray-drying of encapsulated materials to produce encapsulated materials is not disclosed in the art, and is non-obvious as discussed below.

While encapsulated UV filters are known as such, as discussed at page 1 of the present specification, typically these encapsulated materials are prepared by encapsulation and then dispersion in a disperant. Such dispersions have disadvantageous results, as discussed in the specification. For example, additives must be used in order to produce the dispersion and dry powders can not be produced. Thus, the prior art discloses spray-drying UV filters, and discloses dispersions of encapsulated UV filters, but does not disclose spray-drying encapsulated UV materials. Spray-drying of encapsulated UV filters would not be obvious to one of ordinary skill in the art, as one of ordinary skill would expect that structure of the capsules would not be conserved during spray-drying or freeze drying, since encapsulated materials are quite sensitive to mechanical and thermal stresses. As a result, it is respectfully submitted that the reference in no way suggests the spray or freeze-drying of encapsulated materials, to produce encapsulated materials. Withdrawal of this rejection is therefore respectfully requested.

Claim 21 has been rejected under 35 U.S.C. 103 over Hager taken with Herzog. Claim 23 has been rejected under 35 U.S.C. 103 over Hager taken with Chaudhuri. Each of these rejections is made with a secondary reference to provide an alleged teaching of the obviousness of additional compositional components. However, neither secondary reference remedies the deficiency of the primary reference discussed above. Accordingly, it is submitted that these rejections should also be withdrawn, and the same is respectfully requested.

The claims of the application are submitted to be in condition for allowance. However, if the Examiner has any questions or comments, she is cordially invited to telephone the undersigned at the number below.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,
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